

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :12.03.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.17648 of 2018

- 1.A.Kuppan
- 2.N.Ramajothi
- 3.M.Muthukumar
- 4.A.Duraiaraj
- 5.P.Dasaraja
- 6.Kanniappan
- 7.M.Elumalai
- 8.B.Poongavanam
- 9.R.Ambika
- 10.M.Aathimoolam
- 11.R.Indira
- 12.P.Elumalai
- 13.V.Sarasu
- 14.Sivakumar

...Petitioners

vs

- 1.State represented by its
Chief Secretary,
Fort St.George
Chennai - 600 009

- 2.State represented by its
Principal Secretary,
Department of Education,
Fort St.George
Chennai - 600 009

- 3.The Director of School Education,
O/o.The Director of School Education,
Nungambakkam, Chennai.

- 4.The Chief Educational Officer
O/o.Chief Educational Officer,
Vellore District.

- 5.The District Educational Officer,
O/o.District Educational Officer,
Vellore District.

6.The Chief Educational Officer,
O/o. Chief Educational Officer,
Cuddalore District.

7.The District Educational Officer,
O/o.District Educational Officer
Cuddalore District.

8.The Chief Educational Officer,
O/o. Chief Educational Officer
Villupuram District.

9.The District Educational Officer,
O/o.District Educational Officer
Villupuram District.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents 1 to 9 to regularize the services of the petitioners from the date of their appointment and to pay all their arrears from the date of their appointment.

For Petitioners : Mr.S.Manoharan
For Respondents : Mr.P.Raja
Government Advocate

O R D E R

The relief sought for in the present writ petition is for a direction to direct the respondents 1 to 9 to regularize the services of the petitioners from the date of their appointment and to pay all their arrears from the date of their appointment.

2.The learned counsel for the writ petitioner states that the writ petitioners are working as Office Assistant, Night Watchman, Sweeper, Sweeper-cum-Assistant in Government Schools. The writ petitioners have admitted in their affidavit that all the writ petitioners were appointed by way of a resolution passed by the Parent Teachers Association and the Headmaster of the School. The salary of the writ petitioners are being paid from the funds maintained by the Parent Teachers Association.

3.It is further admitted that the writ petitioners were not appointed by the competent authorities of the Education Department by way of a selection. The writ petitioners are not appointed against the sanctioned post and they are receiving the salary from and out of the funds maintained by the Parents Teacher Association of the respective Schools, wherein the writ petitioners are working.

4.The learned counsel for the writ petitioner states that the Government issued G.O.47 dated 02.03.2012, creating the Posts of Assistant, Sweepers and other non-teaching Posts to basic services and in the said vacancies, the names of the writ petitioners are also to be considered for permanent absorption. The writ petitioners have sent representations in this regard and the same have not been considered. Thus, the writ petitioners are constrained to move the present writ petition.

5.The reliance placed on by the writ petitioners are that the Government had created Posts of Office Assistant, Sweepers and other non-teaching posts and the writ petitioners are to be appointed in the said posts on permanent basis in the regular time scale of pay.

6.First of all, the appointments of the writ petitioners are not made by the competent authorities of the Education Department. Admittedly, the writ petitioners are engaged by way of a resolution passed by the Parent Teachers Association and their respective salaries are paid from the funds maintained by the Parent Teachers Association, which is not a Government fund. Therefore, their appointment in the School cannot be construed as an appointment by the Government.

7.Under these circumstances, the very claim set out in the writ petition for regularization in the sanctioned post of the Education Department is unsustainable. The writ petitioners having not appointed by the Department and appointed by way of a resolution passed by the Parent Teachers Association, they are not entitled to claim regularization and permanent absorption. For securing the public employment, the petitioners are bound to participate in the process of selection and by virtue of the appointment made by the Parent Teachers Association, the writ petitioner cannot seek regularization or permanent absorption in the sanctioned post of the Education Department. Thus, the very claim itself is untenable and contrary to the judgment of the Constitution Bench of the Hon'ble Supreme Court of India in the case of the Secretary, State of Karnataka Vs. Umadevi, reported in 2006 4 SCC 1, wherein the Constitution Bench held that all appointments are to be made only under the Constitutional schemes and by following the recruitment rules in force. The writ petitioners were neither appointed in accordance with the recruitment rules nor engaged by the competent authorities of the Education Department.

8.This being the factum, the very relief sought for in the present writ petition cannot be considered and the writ petitioners have to participate in the process of selection for the purpose of securing public employment.

9. With these observations, the writ petition stands dismissed. However, there shall be no order as to costs.

s/d-
Assistant Registrar (CS V)

True Copy

Sub-Assistant Registrar

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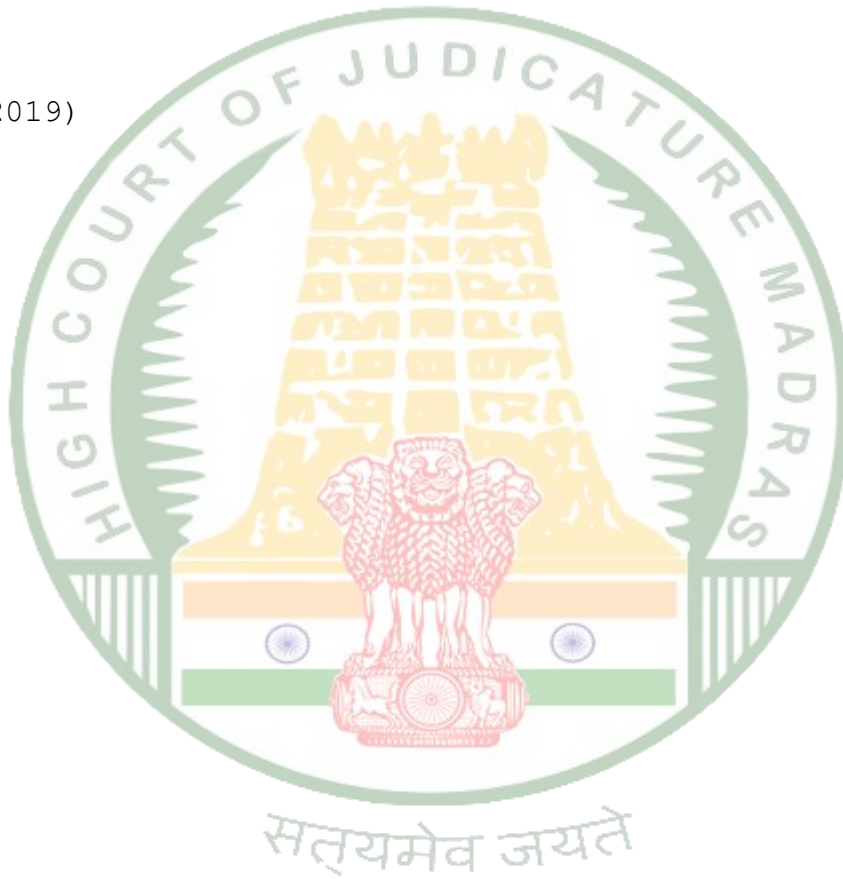
1. The Chief Secretary,
Fort St. George
Chennai - 600 009
2. The Principal Secretary,
Department of Education,
Fort St. George
Chennai - 600 009
3. The Director of School Education,
O/o. The Director of School Education,
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+1 CC to The Govt. Pleader sr 23585.

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NRL (CO)
SP (04/04/2019)



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